

DEPARTMENT OF STATE
THE LEGAL ADVISER

October 12, 1973

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MEMORANDUM

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Justice - Mr. Wilson
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FROM: Stephen M. Schwebel
Counselor on International Law

SUBJECT: BP-Libya Award

The Sole Arbitrator, Judge Gunnar Lagergren, rendered a decision October 10 in the arbitral proceedings brought by British Petroleum against Libya contesting BP's expropriation. A copy of the award is en route to the Department and should be in hand by October 15 or 16.

The tribunal ruled that Libya's seizure of BP's concession rights was arbitrary, discriminatory and confiscatory and in violation of international law. However, the tribunal also ruled that the concession had been terminated by Libya's action and that BP had a right not to restitution but to damages. The tribunal announced that it was prepared to set damages in subsequent hearings, and, from the criteria indicated for their assessment, those damages should be liberally construed. As to whether BP has a right to possession of oil extracted from its concession area after expropriation, the tribunal ruled negatively: its right is confined to damages.

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It will be possible to appraise the award only after studying its text. But the tribunal's ruling on the right to possession of allegedly "hot" oil does not promise to assist suits in pursuit of hot oil and might indeed prove seriously prejudicial.

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